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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/991,810	11/23/2001	David Harris	Brookstone 01.01	5577

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Attention Norman P. Soloway
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EXAMINER

SAADAT, CAMERON

ART UNIT

PAPER NUMBER

3713

DATE MAILED: 01/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

HCT

Office Action Summary

Application No.

09/991,810

Applicant(s)

HARRIS ET AL.

Examiner

Cameron Saadat

Art Unit

3713

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11/23/01.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-13, 15-18, 20-31, 33-37 and 39 is/are rejected.
- 7) ☒ Claim(s) 9, 14, 19, 32 and 38 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2 and 3. 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The antecedent basis for "the sensor" has not been clearly set forth.

5. Claims 1, 4-8, 10-11, 13, 15-16, 18, 20, 23-29, 31, 33-35, 37 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wulf et al. (U.S. Patent Application Publication 2002/0176320 A1; hereinafter Wulf) in view of Archard et al. (U.S. Patent No. 5,983,783; herein after Archard).

Regarding claims 1, 15, 20, and 34, Wulf discloses a bar tool, comprising: a handle 70 (see Fig. 2); a display 236 (see Fig. 21) for displaying drink a drink recipe; and a measuring device 34 extending from the handle for measuring ingredients (see Fig. 6). Wulf does not teach the feature of coupling the display to the handle (as per claims 1, 15, 20, and 34), nor does Wulf disclose that a memory is disposed in the handle (as per claims 15 and 34). However, Archard teaches a measuring device 29 extending from a handle 22, wherein the display 25 is coupled to the handle, and the handle further houses a memory. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify the display position described in Wulf, by coupling the display and memory to the handle, in light of the teachings of Archard. The motivation for doing so would have been to provide a more convenient location for the display, thereby providing a more functional measuring device (see Archard, column 2, line 66 – column 3, line 3).

Regarding claim 4 and 23 Wulf discloses a bar tool, further comprising a memory for storing a plurality of drink titles/recipes (see Fig. 35, 36).

Regarding claims 5, 16, 24, and 35, Wulf discloses a bar tool, further comprising an actuator 222 for scrolling through the plurality of drink titles stored in the memory (page 10, col. 2, paragraph 0135).

Regarding claims 6 and 25, Wulf discloses a bar tool, wherein each drink title has an associated list of ingredients stored in memory (see Fig. 36).

Regarding claims 7 and 26, Wulf discloses a bar tool, further comprising an actuator 222 for scrolling through the list of ingredients stored in memory (see page 10, col. 2, paragraph 0135).

Regarding claims 8 and 27, Wulf discloses a bar tool, further comprising a controller 224 for determining text to be displayed on the display (see Fig. 21).

Regarding claims 10 and 28 Wulf discloses a bar tool, wherein the display displays text (see Fig. 33).

Regarding claims 11 and 29, Wulf discloses a bar tool, wherein the display displays icons (see Fig. 37).

Regarding claims 13, 18, 31, and 37, Wulf discloses a bar tool wherein the measuring device 34 is removable from the base unit 32 which houses electronic components. Wulf does not teach the feature of detaching the measuring device from the handle. However, it would have been obvious to a person of ordinary skill in the art to make the handle removable from the measuring unit, so that the user can easily clean and wash the measuring device after use without damaging the electronic components with water.

Regarding claims 33 and 39, Wulf discloses a tool wherein the recipe is selected from a group consisting of cooking (see Fig. 33).

6. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wulf et al. (U.S. Patent Application Publication 2002/0176320 A1; hereinafter Wulf) in view of Archard et al. (U.S. Patent No. 5,983,783; herein after Archard), in view of Dungan (U.S. Patent No. 22,768).

Wulf discloses a bar tool wherein the measuring device comprises a measuring container 34. However, the measuring container does not comprise a first and second measuring container (as per claim 2), wherein the first measuring container has a volume capacity larger than the second container (as per claim 3). However, Dungan discloses a measuring container wherein

Art Unit: 3713

the measuring container comprises a first and second measuring container, wherein the first container has a volume capacity larger than the second container (see Figs. 1 and 2). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify the measuring device as described by Wulf and Archard, by providing a measuring container having two containers with two different volume capacities, in light of the teachings of Dungan, thereby providing multiple measuring sizes within one measuring device.

7. Claims 12, 17, 30, and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wulf et al. (U.S. Patent Application Publication 2002/0176320 A1; hereinafter Wulf) in view of Archard et al. (U.S. Patent No. 5,983,783; herein after Archard), further in view of Ancona et al. (U.S. Patent Application Publication 2002/0009016 A1; hereinafter Ancona).

Regarding claims 12, 17, 30, and 36, Wulf discloses a bar tool comprising memory, however does not disclose a communications port for changing the memory. However, Ancona discloses a bar tool comprising a communications port for changing memory (page 1, col. 2, paragraph 0015). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify the memory unit described by Wulf, by providing a communications port that allows interchanging of the memory unit, in light of the teachings of Ancona, in order to allow the user to interchange memory units, and thereby expanding the capacity of memory to provide more recipes.

Allowable Subject Matter

8. Claims 9, 14, 19, 32, and 38 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is an examiner's statement of reasons for allowance:

Patentability is seen in, although not limited to:

(Claim 9) the combination of a measuring device comprising a handle and a display for displaying drink recipes with the feature of providing a controller for displaying a next ingredient in the recipe when a sensor senses rotation in the handle. The closest prior art of record does not teach or fairly suggest this feature in the combination.

(Claims 14, 19, 32, and 38) the combination of a measuring device comprising a handle and a display for displaying drink recipes with the feature of allowing the measuring device to rotate in the handle. The closest prior art of record does not teach or fairly suggest this feature in the combination.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- Luciani et al. (U.S. Patent No. 4,736,871) – discloses a measuring device comprising a display.
- Morley (U.S. Patent No. 1,744,328) – discloses a cocktail comprising drink recipes.

Art Unit: 3713

- Brady (U.S. Patent No. 4,482,327) – discloses an apparatus to train a person to pour predetermined quantities of liquids into containers.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cameron Saadat whose telephone number is 703-305-5490. The examiner can normally be reached on M-F 8:00 - 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Valencia Martin-Wallace can be reached on 703-308-4119. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

CS

CS
January 11, 2003

V. Martin-Wallace

VALENCIA MARTIN-WALLACE
SUPERVISORY PATENT EXAMINER
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